COURT NO. 2

THE HIGH COURT OF THE UTTARANCHAL AT NAINITAL

Appeal from Order No. 458 of 2001

(Old No. 1209/1993)

Anantram Pasupalak
And others. … **Appeallants.**

Versus

New India Assurance Co. Ltd.
and others. … **Respondents.**

Coram : Hon'ble P.C.Verma,J.
Hon'ble B.S. Verma,J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act 1988, ***(in short the Act)*** against the judgment and Award dated 07-09-1993 passed in M.A.C.T. Case No. 22 of 1991, Anant Ram Pasupalak and others Vs. New India Assurance Company Ltd. and another, by Motor Accident Claims Tribunal Chamoli at Gopeshwar ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and has awarded Rs. 25,000/- as compensation along with interest @ 12% per annum, as mentioned in the impugned order, in favour of the claimant No. 1 and 4-appellant no. 1 and 4 under Section 166 of the Act and has dismissed the claim in respect of claimant-appellant nos. 2 and 3. Aggrieved, the claimant –appellants have come up in appeal for enhancement of quantum of compensation on the ground that the learned Tribunal has failed to appreciate the evidence and the findings of the learned Tribunal are erroneous.

Brief facts, giving rise to the present appeal, are that on 18.9.90 one Brundabana Pasupalak, along with his parents and others, was travelling from Hardwar to Badrinath Dham by bus bearing registration No. UTS-1091. When at about 2 p.m., the bus reached near Ratoli about 4,1/2 Kms. From Rudraprayag on

Srinagar-Rduraprayag road, it met with an accident on account of rash and negligent driving by its driver, with the result said Brundabana Pasupalak sustained grievous injuries and succumbed to his injuries, and his mother Smtm. Chandrawati Pasupalak too met with the same fate. The deceased was aged 35 years and was unmarried at the time of this death. The bus driver has committed violation of traffic rules. F.I.R. of this accident was lodged with Police Station Rudraprayag at Crime No. 25/90 Under Sections 279, 337, 304-A I.P.C. It is alleged in the petition that the deceased was earning Rs. 8000/- per month from the business of wholesale vegetables. Claimant no. 1 being the father and claimants no. 2 to 4 being his brothers and sister have filled the present claim petition for compensation of Rs. 25,00,000/- on account of death of the deceased Brundabana.

Opposite Party No. 1-respondents no.1 filed written statement and contested the case. The Insurance Company has pleaded that the claim petition has been filed with wrong facts and suffers from defects of proper signing and verification. It was also alleged that the bus in question was carrying more passenger than the authorised capacity. It was alleged that deceased was not having any income of his own. It is also alleged that under the orders of the State of U.P. a compensation of Rs. 20,000/- has been paid. The jurisdiction of the court has been challenged on the ground that the accident took place in district Pauri, therefore, the claim petition is not maintainable for want of jurisdiction. It has also been pleaded thata since the owner of the bus has violated terms and conditions of permit and policy, therefore, the answering opposite party is not liable to pay compensation.

The O.P.-respondent no.2 Ram Lal Batra, owner of the offending bus, filed his written statement and contested the case. It has been stated that the bus was duly insured with the O.P.-respondent no. 1 on the date of accident. It is also pleaded that the

bus was being used for the purpose covered by the permit and the driver was holding a valid driving licence. It has been further alleged that the accident in question was not the result of rash and negligent driving by the bus driver, but the accident occurred while giving pass to a vehicle coming from the opposite direction with the result the bus fell down into a ***Khadd,*** therefore, the liability to pay compensation rests on the Insurance Company.

On the pleadings of the parties, the learned Tribunal framed as many as **five Issues** in the case. **Issue No. 1** related to rash and negligent driving by the driver of the alleged bus. Issue **no.2** related to travelling of the deceased by the bus in question. **Issue No. 3** related to plea of overloading of the bus by the Insurance Company –O.P. No. 1 **Issue No. 4 and 5** related to the relief sought in the claim petition.

Before the learned Tribunal, both the parties filed documentary evidence. The claimants have adduced in oral evidence two witnesses, namely, Simanchala Pasualak as P.W. 1 and Nitya Nand as P.W. 2, but the Opposite Parties have not led any oral evidence. After hearing both the parties and considering the evidence before it, the learned Tribunal took Issue No. 1 for decision. It came to the conclusion that it was the rash and negligence on the part of the driver of the bus, due to which the said motor accident took place and accordingly decided the issue no. 1 in favour of the appellant-claimants. On Issue No. 2, the learned Tribunal was of the view that it was proved on record that the deceased was travelling by the ill-fated bus on the date of accident. On Issue No. 3, the learned Tribunal found that the liability to pay compensation rests on the Insurance Company and decided the Issue accordingly. The Tribunal took Issue No. 4 and 5 together for disposal. After considering the material available before it, the learned Tribunal found that the age of the deceased was 35 years at the time of accident. As regards monthly income of the deceased,

the learned Tribunal held that income of the deceased has not been proved on record and accordingly, the Tribunal has held that the annual income of the deceased can be accepted as Rs. 15,000/- Ultimately, the learned Tribunal has held that the claimant No.1 and 4 alone are entitled to get compensation worth Rs. 25000/- (twenty-five thousand). The amount of claim under other head was not accepted by the Tribunal. The learned Tribunal has held that the amount of compensation is payable by the Insurance Company-respondent no.1. Accordingly, the claim petition was allowed, as mentioned earlier.

The main contention raised on behalf of the appellants for consideration before us in the present appeal is that the amount of compensation is very less keeping in view the proved income of the deceased to be Rs. 8000/-per month. Therefore, it has been urged that the compensation amount be enhanced taking into consideration the evidence on record.

We have heard learned counsel for the parties and have carefully gone through the entire material before us as well as the impugned judgment and award. The learned Tribunal recorded a finding on the point of the income of the deceased that according to the claimant-appellants the deceased was doing the whole-sale business of vegetables and his income was Rs. 8000/- p.m. Para No. 8 of the claim petition reveals that the deceased had not been paying any income tax in the year 90-91. The annual income above Rs. 18000/- was taxable. The deceased was unmarried. The Tribunal has rightly held that he might be expending major portion of the income on him. P.W. 1 Simanchala had admitted that all the claimants except his sister were having their independent income. It shows that none of the claimants except claimant No. 4 could be the dependent on the deceased and the learned Tribunal has rightly awarded compensation of Rs. 25,000/- which appears to be just and proper in the circumstances of the case

and has rightly rejected the claim petition in respect of claimant nos. 2 and 3, being his brothers.

Having considered all the facts and circumstances of the case, in our opinion, there is no evidence to show that the impugned judgment and award suffers from any illegality or infirmity. The entire evidence both oral and documentary on record has been elaborately considered by the learned Tribunal, therefore, we do not find any reason to interfere with the findings recorded by the learned Tribunal.

Ultimately, the appeal has no force and deserves dismissal.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

16-08-2004 **(B.S.Verma,J.)** **(P.C.Verma,J.)**

RCP